

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MICHAEL CLAYTON,

Plaintiff,

v.

CHILDREN'S HOSPITAL, et al.,

Defendants,

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No. 4:15CV1177 RLW

**MEMORANDUM AND ORDER**

Plaintiff brings this action under Title VII and the Americans with Disabilities Act alleging employment discrimination. He did not file this case within the ninety-day time limit, and this case is dismissed without further proceedings.

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. The Court may dismiss an action under § 1915(e) if “it is apparent the statute of limitations has run.” *Myers v. Vogal*, 960 F.2d 750, 751 (8th Cir. 1992).

A plaintiff in a Title VII or ADA action has ninety days from receipt of the right-to-sue letter to file a civil action. 42 U.S.C. § 2000e-5(f). Failure to file a timely civil action warrants dismissal of the complaint. *E.g., Braxton v. Bi-State Development Agency*, 728 F.2d 1105, 1108 (8th Cir. 1984).

Plaintiff alleges that defendant unlawfully terminated him because of his race, because he reported harassment, and because his wife and child are disabled. Plaintiff attached a right-to-sue letter to the complaint, which was mailed to plaintiff on February 9, 2015. The ninety-day

period in this case elapsed on approximately May 10, 2015. Plaintiff, however, did not file the instant action until July 30, 2015.

Plaintiff says that the case should not be dismissed as untimely because “Attorney Elena Parker for Children’s Hospital agreed with Attorney Jeremy Gogel for the Plaintiff to toll the deadline for the Plaintiff to file any EEOC/MHRA claims until July 30, 2015.”

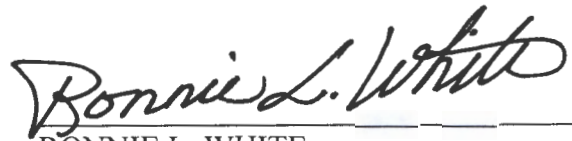
“Courts have generally reserved the remedy of equitable tolling for circumstances which were truly beyond the control of the plaintiff.” *Hill v. John Chezik Imports*, 869 F.2d 1122, 1124 (8th Cir. 1989). Plaintiff has not shown that circumstances beyond his control prevented him from timely filing this action. As a result, this case is dismissed as untimely.

Accordingly,

**IT IS HEREBY ORDERED** that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 19<sup>th</sup> day of August, 2015.

  
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RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE